



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER
Real Property Management Division

REAL PROPERTY MANAGEMENT DIVISION INTERIM BULLETIN #32

June 2012

Subject: INTERIM Guidance on RPMD Implementation of Executive Order 11988, Floodplain Management and Executive Order 11990, Protection of Wetlands

Category: Environmental Requirements

Overview

NOAA's Safety and Environmental Compliance Office (SECO) is drafting and obtaining clearances and approval of a *NOAA Administrative Order 216-6 E.O. 11988/11990 Companion Manual, Implementing Procedures for Executive Order 11988, Floodplains Management and Executive Order 11990, Protection of Wetlands* (the Companion Manual). In order to provide guidance until the Companion Manual is issued, this Interim Bulletin is being issued. It is based on the most recent Companion Manual draft available to RPMD. This Bulletin will be revised and issued in final once the Companion Manual is officially issued. This Bulletin does not address NEPA requirements. NOAA Administrative Order (NAO) 216-6 and the NOAA NEPA Handbook should be utilized in performing NEPA compliance. Responsible Program Managers are responsible for complying with NAO 216-6. Should any conflict arise between this Bulletin and NAO 216-6, NAO 216-6 shall govern.

Floodplain and Wetlands Advance Planning

Each fiscal year¹, RPMD will develop a list of actions² (expiring leases³, renewals, new requirements) that are located in/could be located in or adversely affect a floodplain and/or wetland and where NOAA will be executing the action (for GSA actions see below). The list will be provided to the SECO Environmental Compliance Director. As RPMD becomes aware

¹ Date will be determined by the RPMD Director

² For Major Capital Investments, best efforts shall be made to identify whether the action is likely to occur in or adversely affect a floodplain or wetland well in advance of the planned occupancy date, preferably 2-5 years prior to that date. Major Capital Investments are defined later in this Bulletin.

³ The term lease as used in this Bulletin includes licenses, permits, and other real estate instruments.

of any new, and immediate, requirement located in or adversely affecting a floodplain or wetland that was not provided to SECO in the Advance Planning List, information on the project will be sent to the SECO Environmental Compliance Division Chief. SECO will assign a SECO representative to each action to collaborate with RPMD.

Actions Where GSA is the Contracting Authority

For actions where GSA will execute the lease, license, or other instrument, GSA is responsible for ensuring that all regulatory requirements are met for compliance with the floodplain and wetlands Executive Orders. RPMD will assist GSA as requested but will not be the responsible party for GSA-conducted procurements pursued on behalf of NOAA. GSA may require that NOAA fund the costs associated with any public notice and/or EA or EIS; the requesting office⁴ should budget for such expense.⁵

Identifying Whether an Action Is In or Will Adversely Affect a Floodplain or Wetland

As part of the Advance Planning for Floodplains/Wetlands described above, RPMD will identify whether upcoming actions are likely to occur in or adversely affect a floodplain. Unanticipated actions⁶ also require a determination of whether the action will be in or adversely affect a floodplain or wetland. RPMD shall follow the procedures outlined in **STEP 1** (see attached Detail of Steps in the EO 11988 and 11990 Compliance Process – Attachment D) to determine whether the action will be in or adversely affect a floodplain or wetland. If it is unclear whether an action will occur in or adversely affect a floodplain or wetland SECO along with the requesting line/staff office will assist the Realty Specialist in making such a determination and an official of the requesting line/staff office shall concur in writing with the decision. If it is determined that an action is in or will adversely affect a floodplain or wetland the Realty Specialist will advise, in writing, the Responsible Program Manager (RPM). If it is determined that an action is not in and will not adversely affect a floodplain or wetland then this shall be documented in the lease file. No other action is required.

Identifying the Responsible Program Manager (RPM) for E.O.'s 11988/11990

For NOAA real property actions performed by RPMD, the following shall apply:

- For actions below the Simplified Leasehold Acquisition Threshold (SLAT): The RPM shall be the official designated as such by the requesting line or staff office.⁷
- For actions above the Simplified Leasehold Acquisition Threshold, including those classified as Major Capital Investments, the RPM shall be the NOAA Deputy Chief Administrative Officer. The NOAA Deputy CAO may further delegate this authority to the Director RPMD.

⁴ Requesting office is defined as the line or staff office that will be the primary occupant of the space.

⁵ GSA Pricing Policy states that the PBS fee does not cover required environmental studies such as EAs or EIS's but that GSA will perform such studies on a reimbursable basis. Generally, NOAA will provide a Reimbursable Work Authorization (RWA) to GSA to cover the expense of the EA or EIS.

⁶ Unanticipated actions are those that were not included in the Advance Planning List because RPMD was unaware of the requirement. These are usually new requirements generated by a line or staff office.

⁷ In most cases line and staff offices have designated a Responsible Program Manager. If the RPM has not been designated, the requesting office must identify the official within their office who will assume the RPM responsibility for the procurement/action.

A. Actions Covered by a Class Review

For a group of similar actions where NOAA has a frequent need to be located in a floodplain and/or wetland (such as placing antennas on towers within the floodplain and locating flood gauges in floodplains) NOAA may perform a Class Review. Once a Class Review has been completed, if an action falls within that Class Review the RPMD official shall create a short memo for the lease file that includes a description of the action and an explanation that the action falls within the parameters and scope of the Class Review. The requesting line/staff office RPM shall also sign the memo identifying the action as within the parameters of the Class Review. In cases where an action is covered by a Class Review, the National Environmental Policy Act and NOAA Administrative Order 216-6 *Environmental Review Procedures for Implementing the National Environmental Policy Act* must still be followed. See NAO 216-6.

For actions where a Class Review has not been performed but where an RPMD Realty Specialist believes that there are a sufficient number of actions that would meet the guidelines for a Class Review (as described in Attachment D), the Realty Specialist should request that their Region Chief forwarded a request for the performance of a Class Review to the RPMD Deputy Director. The RPMD Deputy Director will determine whether to pursue the Class Review. SECO will assist and provide guidance to RPMD in performing the class review. Class Reviews will follow the procedures required under the Executive Orders and NOAA policy including SECO review (allow for 10 business days) of the Class Review documentation. Class Reviews, once completed, will be posted to the RPMD internal website.

B. Actions not Covered by a Class Review

Summary Chart

		APPLICABLE PROCESS ^(*1)	
		CE Process ^(*2)	EA or EIS Process ^(*3)
RPM (E.O. 11988 and 11990)	Below SLAT	Requesting Line/Staff Office	Requesting Line/Staff Office
	Above SLAT	Deputy CAO unless delegated to RPMD Director	Deputy CAO unless delegated to RPMD Director

(*1) See Processes Described in the Section Below

(*2) Actions Qualifying for NEPA Categorical Exclusion will follow the "Process for Actions Qualifying for a Categorical Exclusion" described below

(*3) Actions Requiring an EA or EIS under NEPA will follow the "Process for Actions Requiring an Environmental Assessment or Environmental Impact Statement" described below

1) ACTIONS QUALIFYING FOR A NEPA CATEGORICAL EXCLUSION

NEPA CE Actions Below the Simplified Lease Acquisition Threshold (SLAT)

If an action is: a) not covered by a Class Review; b) below the Simplified Lease Acquisition Threshold (SLAT); AND, c) qualifies for a Categorical Exclusion (CE) under the National Environmental Policy Act and NOAA Administrative Order 216-6 *Environmental Review Procedures for Implementing the National Environmental Policy Act* then the below “Process for Actions with a Categorical Exclusion” shall be utilized.

NEPA CE Actions Above the SLAT

If the action is above the SLAT and qualifies for a Categorical Exclusion under NEPA then the below “Process for Actions with a Categorical Exclusion” shall be followed EXCEPT that the RPM shall be the NOAA Deputy CAO, or the RPMD Director if so delegated by the NOAA Deputy CAO. Actions listed as being completed by the RPM shall be completed by either the NOAA Deputy CAO or the RPMD Director (if delegated).

For any action above the SLAT, the Realty Specialist shall determine whether the action is a Major Capital Investment. Major Capital Investments are defined as acquisitions whose life cycle costs are \$20 million or greater or acquisitions that are high risk or complex.⁸ The RPMD Director should be notified in advance if any Major Capital Investment project is anticipated to be located in or adversely affect a floodplain or wetland. Major Capital Investment projects shall also follow NOAA’s integrated capital investment planning process and the EO 11988/11990 compliance process (see Attachment D).

Leasing Process Integration with Floodplains/Wetlands Executive Orders if there is a Categorical Exclusion under NEPA (“Process for Actions Qualifying for a Categorical Exclusion”)

The following procedures have been approved by SECO, the Office of General Counsel, and RPMD with regard to compliance with EOs 11988/11990.

- If a lease procurement is likely to occur in or adversely affect a floodplain and/or wetland (as determined in **STEP 1** – See Section “Identifying Whether an Action Is In or Will Adversely Affect a Floodplain or Wetland” above) the Realty Specialist will request that the RPM complete the “Questionnaire for DOC/NOAA Property Located within a Floodplain and/or Wetlands” (Attachment A). RPMD will assist the line/staff office as necessary.
- The Solicitation for Offers/Request for Lease Proposal shall include the following language to alert offerors that information regarding their site may be utilized in a public notice relating to floodplains/wetlands. “Offerors are advised that the Government may be required to release the location and basic characteristics of each offered site in public documents in order to comply with the requirements of environmental review regulatory requirements, such as Executive Order 11988 Floodplains Management and Executive

⁸ The definition of Major Capital Investments, including the value threshold, will be provided in detail/may be revised in an upcoming NOA on Facility Capital Planning and Project Management Policy.

Order 11990 Protection of Wetlands⁹. Submission of an offer is offeror's concurrence with the release of the location and basic characteristics of offeror's site/plans to meet the Government's requirements."

- If the action may be classified as a Limited Action, see Attachment D, then RPMD shall request/the RPM shall provide a statement identifying the action as a Limited Action. Attachment D provides procedures for Limited Actions.
- In completing the Questionnaire for DOC/NOAA Property Located within a Floodplain or Wetlands the RPM will identify practicable alternatives to locating in a floodplain and/or wetland in accordance with Attachment D. SECO will utilize the completed Questionnaire to complete the NOAA E.O. 11988 Floodplain and E.O. 11900 Wetland Compliance Checklist (see the sample included as Attachment B). The Compliance Checklist includes an alternatives identification section that provides compliance with **STEP 2** required under EOs 11988/11900 (see Attachment D). For actions that are considered Limited Actions under the requirement in Attachment D, the Checklist merely confirms that there are no practicable alternatives but Step 2 is not required for such Limited Actions.
- The Realty Specialist and NOAA Environmental Compliance Officer will assist the RPM to develop appropriate public notice. The RPM is responsible for identifying the publication method, and whether public meetings are needed. The publication of any notices, the holding of any meetings, and cost(s), if any, of these actions are the responsibility of the requesting office. For Limited Actions inclusion of a statement, within the public notice, that no further public notice will be given if no public comments are received should be considered if the RPM and Realty Specialist believe that the action is non-controversial and unlikely to produce any public comments (this eliminates the need for a second public notice if no public comments are made and no changes in the planned action occur). See **STEP 3** in Attachment D. Note: If there is limited competition and the Realty Specialist believes that issuance of the public notice could adversely affect the lease procurement (the rental rate, other lease terms) the Realty Specialist may require that final proposal revisions (best and final offers) be received from all offerors before publication of the notice or any other public notice action.
- The NOAA E.O. 11988 Floodplain and E.O. 11900 Wetland Compliance Checklist includes sections analyzing the impact(s) of the proposed action and identifying mitigation or minimization measures, if any. See **STEPS 4 and 5** in Attachment D. Any public comments received are included in the review of impacts and mitigations measures (See **STEP 6** of Attachment D).
- For actions that are not Limited Actions, SECO's Checklist provides the re-evaluation of practicable alternatives required in Step 6 EO 11988 and 11900 Compliance Process (Attachment D). For Limited Actions Step 6 is not required.
- SECO will complete its review and sign the SECO Compliance Checklist documenting that the action has been reviewed.
- The RPM, with the assistance of the SECO Checklist, shall make a final determination and shall be asked to provide a copy of such determination to the Realty Specialist. Concurrent with the award of the lease a public notice of the final determination shall be

⁹ The relevant Executive Order(s) should be cited depending on if the action will be in or adversely affect a floodplain or a wetland.

issued. This is **STEP 7** under the EO 11988 and 11990 compliance process (Attachment D). If the action is a Limited Action or if no public comments have been received then no additional public notice is required.

- The lease (or other real estate action) becomes effective. This is **STEP 8** in Attachment D.

2) ACTIONS REQUIRING AN ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT

The following procedures should be used regardless of the value of the procurement if an Environmental Assessment or Environmental Impact Statement is required. If the procedures below conflict with the NOAA capital investment planning process or the National Environmental Policy Act (including NOAA Administrative Order 216-6), the capital investment planning process and the NEPA shall govern. The RPM for E.O. 11988 and 11990 will be determined in accordance with the Section “Identifying the Responsible Program Manager (RPM)” above.

Leasing Process Integration with Floodplains/Wetlands Executive Orders if an Action Requires an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA) “Process for Actions Requiring an Environmental Assessment or Environmental Impact Statement”

Best efforts should be made to determine if a real property action will require an EA or EIS as early as possible in the procurement planning process. In cases where a specific location for the action is not identified (i.e. a lease renewal, succeeding lease, or sole source procurement) or assured, RPMD shall consult with NOAA SECO (which will work with the PPI NEPA Coordination Staff) and the requesting line/staff office to determine whether it is practicable and desirable to perform a programmatic EA or EIS. A programmatic EA or EIS may facilitate a more efficient and expedited procurement process and assist in identifying key issues/mitigation measures, etc.¹⁰

If a NEPA analysis is required, RPMs will follow the procedures in the NAO 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act (May 20, 1999), except when the requirements in the EO 11988 and EO 11990 compliance process (Attachment D) are more stringent (e.g., public noticing requirements).

The following is a basic outline of how a lease procurement involving a NEPA required Environmental Assessment in a floodplain would occur. More detailed information is provided in NAO 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act. The below assumes that a programmatic EA or EIS has not been completed.

- Requirements developed including the delineated area.

¹⁰ Early information on mitigation measures and potential impacts may help shape the procurement strategy and/or assist in ensuring special requirements/measures are included in the Solicitation for Offers/Request for Lease Proposals.

- The Solicitation for Offers (SFO)/Request for Lease Proposals (RFP) would be issued including the statement that “Any award or contract will only be made for a property located within a base flood plain or wetland if the NOAA process for compliance with Executive Orders 11988 and 11990 has been performed and the selection of that property complies with the Executive Orders.” Additional language would be added alerting offerors that the Government may be required to release the location of each offered site and other site specific information in public hearings or in public notice documents. The Contracting Officer shall work with the Office of General Counsel, the RPM, and SECO to ensure that the SFO/RLP contains appropriate language both notifying the offer of the planned release of information and providing for offeror provision of relevant documents that may assist in the EA process (traffic studies, offeror-commissioned environmental studies, etc.). See Attachment C for examples of information the Contracting Officer may wish to request.
- Offers are received.
- The RPM conducts a NEPA scoping process to determine the environmental resources of concern, including whether the sites offered are located in or adversely affecting floodplains or wetlands (**STEP 1**). Sites are evaluated by the Responsible Program Manager (RPM), in coordination with SECO to determine if they are located in or adversely affecting the floodplain.
- The RPM identifies any practicable (known as “reasonable” under NEPA) alternatives to locating within and outside the floodplain and wetlands (**STEP 2**). Given that final offers would not be available, the identification of practicable alternatives is preliminary. These alternatives would be used to satisfy the requirements of both NEPA and the E.O. 11988/11990.
- An EA or EIS shall be drafted by SECO (or by a consultant hired by SECO) with participation/review by RPMD and the requesting office. The requesting office shall fund the EA or EIS.
 - o The EA or EIS analyzes the potential environmental impacts of the potential actions/offers (aka, the alternatives for compliance with NEPA and the E.O. 11988/11990) (**STEP 4**). The types of required impacts to consider for floodplains and/or wetlands are detailed in Attachment D. It should be noted that additional environmental requirements, such as the Endangered Species Act, Clean Water Act, etc., may also apply and should be evaluated through the development of the EA or EIS.
 - o The EA or EIS identifies measures, if any, to mitigate potential impacts (**STEP 5**). The required mitigation measures to consider for floodplains and wetlands are elaborated in Attachment D. Additional mitigation measures for other environmental requirements may also apply depending on the potential impacts to environmental resources, such as threatened or endangered species.
 - o The EA or EIS includes a preliminary review of practicable alternatives.

- If a draft EIS is prepared, the realty specialist will provide the draft EIS to PPI for a required 10 day review.¹¹ Following incorporation of comments from PPI, the realty specialist will submit the DEIS to PPI for clearance (allow 5 days) prior to noticing the availability of the DEIS with the Environmental Protection Agency (EPA).
- Public notice of the availability of the draft EA or EIS for review including statements noting the sites under consideration within or affecting a floodplain and/or wetlands is given (**STEP 3**).¹² The length of the public comment period is determined by the RPM in the case of EAs (generally 30 calendar days); however, in the case of EISs, the public comment period is normally a minimum of 45 calendar days as required by the NEPA CEQ Regulations and is determined by the EPA¹³. The RPM also determine if other public involvement actions, such as holding public hearings, are required.
 - The draft EA or EIS is given to each of the offerors. Offerors are informed in writing that they will be responsible for the cost and implementation of any mitigation measures listed in the draft EA or EIS.
- The Contracting Officer calls for and receives final proposal revisions (Best and Final Offers). Receipt of final proposal revisions will assist the RPM to consider all relevant information during the NEPA process.
- Public comments are received and considered, including re-evaluation of reasonable (NEPA) and practicable (E.O. 11988/11990) alternatives as necessary (**Step 6**). The RPM revises the draft EA or EIS, taking into account the information obtained through the public comment process and any other new information.
- The RPM provides the final EA/draft FONSI or Final EIS to the NOAA NEPA Coordinator for review (10 business days).
- Contracting Officer (or Source Selection Authority for a tradeoff procurement) identifies the apparent successful offeror. In the case of an EA, the site of the apparent successful offeror, for the NOAA proposed action, may not have significant environmental effects after implementation of identified mitigation measures, otherwise, an EIS must be performed for the proposed action.

¹¹ EAs may also be submitted to PPI for review (10 days) at the draft stage. Submission at draft is recommended when a public review will take place. In that case, the post-public review draft EA should be re-submitted to PPO for a short second review if changes have been made from the draft.

¹² If the Contracting Officer believes release of the draft EA or EIS will hurt the competitive nature of the procurement the Contracting Officer may require receipt of final proposal revisions (Best and Final Offers) PRIOR to public notice of the draft EA or EIS and release the draft EA or EIS to each offeror. However, the Contracting Officer should make best efforts to ensure that offerors are informed of any mitigation measures they will be responsible for performing to ensure that their final proposal revisions take into consideration the costs of those measures, if any.

¹³ 45 days is the normal minimum. NOAA may extend this period. NOAA may also request that the EPA agree to reduce this period by showing compelling reasons of national policy (40 CFR 1506.10(d))

- For an EA, the RPM will sign a Finding of No Significant Impact. The RPM will submit the Final EA, signed FONSI, and other required clearance documentation to the NOAA NEPA Coordinator for their concurrence (3 business days). For a Final EIS, the RPM will submit the Final EIS and other required clearance documentation to the NOAA NEPA Coordinator for their concurrence (5 business days). The RPM will then submit the Final EIS to the EPA for public release. The Record of Decision for the Final EIS may be signed by the RPM¹⁴ no earlier than 90 days from the public release of the Draft EIS or 30 calendar days from the public release of the Final EIS, whichever is later (40 CFR 1506.1(b)).
- The RPM issues a public notice of a final determination to an action located in or affecting the floodplain and wetlands and the notice of the availability of the final EA and FONSI (**STEP 7**). If the public notice of the EA or EIS is not performed then a public notice will be issued in accordance with the elements outlined in Step 7 of the EO 11988 and 11990 compliance process (Attachment D).
- The Lease is awarded (STEP 8) **simultaneously** with Step 7 above.
- SECO is notified and provided with the completed documentation for the E.O. compliance process. All documents are included in the lease file.

Attachments

A – Sample SECO Questionnaire for DOC/NOAA Property Located within a Floodplain and/or Wetland

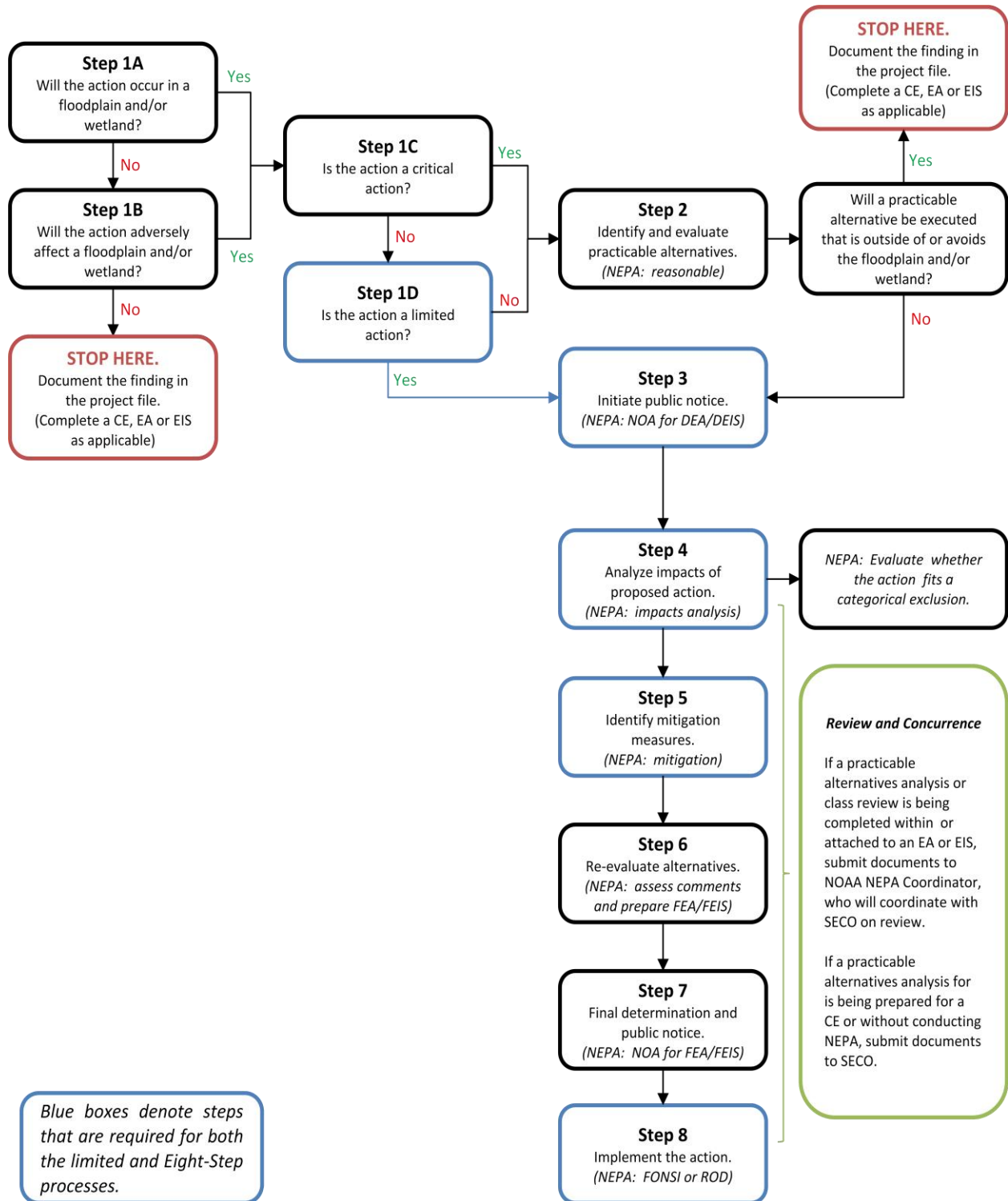
B – Sample SECO EO 11988/11990 Checklist

C – Sample language for inclusion in the Solicitation for Offers (SFO) when an EA or EIS may be required and/or the offeror may be in or adversely affect a floodplain or wetland.

D – Detail of the Steps in the EO 11988 and 11990 Compliance Process.

¹⁴ Assuming the RPM has been delegated authority to do so.

Attachment D – Detail of Steps in the EO 11988 and 11990 Compliance Process



Step 1A: How to Determine the Presence of Floodplains and/or Wetlands

In order to determine whether the proposed action will occur in floodplain, the RPM will use the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM)¹⁵. *If the proposed action is located in a floodplain, then **proceed to Step 1C**. If the proposed action is not located in the floodplain, then **proceed to Step 1B**.*

In order to determine whether the proposed action will occur in or adversely affect a wetland, the RPM will use the U.S. Fish and Wildlife Service National Wetlands Inventory (NWI)¹⁶. *If the proposed action is located in a wetland **proceed to Step 1C**. If the proposed action is not located in the wetland, then **proceed to Step 1B**.*

Step 1B: How to Determine Adverse Affects of Actions outside of the Floodplain and/or Wetland

In order to determine whether a proposed action outside of the floodplain and/or wetland may have adverse effects, the RPM will identify and evaluate pertinent information related to the scale and scope of the action and surrounding environment. Proximity to the floodplain and/or wetland is a factor, but not necessarily the only factor in determining whether there is potential for adverse effects. Other factors to consider when assessing whether a proposed action may adversely affect a floodplain and/or wetland include:

- Does the proposed action urbanize a large area with pavements and rooftops that would increase the amount and speed of runoff?
- Does the proposed action include drainage systems that accelerate flood flows to downstream areas?
- Does the proposed action involve erecting structures that deflect/block flood water flow or increase downstream erosion?
- Does the proposed action involve removing dunes or inland areas where communities are protected from storm surges and high waves?

*If the proposed action adversely affects a floodplain and/or wetland, proceed to **Step 1C**. If the proposed action is not adversely affecting a floodplain and/or wetland, then **stop here** and document the finding in the project file. Even if the proposed action is not adversely affecting a floodplain and/or wetland, a categorical exclusion, Environmental Assessment (EA), or Environmental Impact Statement (EIS) may be necessary for the proposed action and if so, must be completed using the internal NEPA procedures in NAO 216-6.*

¹⁵ Web resources to find FIRM map information may include: FEMA's Map Services Center (msc.fema.gov), National Flood Insurance Program (NFIP) (www.floodsmart.gov), or the National Flood Hazard Layer Web Map Service (<https://hazards.fema.gov/femaportal/wps/portal/NFHLWMSkmzdownload>).

¹⁶ Web resources to find NWI information may include: U.S. Fish and Wildlife Service's National Wetlands Inventory (www.fws.gov/wetlands).

Step 1C: Is the action a critical action?

A critical action is any activity located in or adversely affecting a floodplain and/or wetland where even a slight chance of flooding is too great a risk. The concept reflects the concern that the impacts of floods on human safety, health and welfare for many activities could not be minimized unless a higher degree of protection than the base flood was provided. Therefore, these types of actions are subject to a higher minimum standard, the 500-year flood. While this flood standard is a less frequent event, there may be records of even greater historical events. Therefore, the greater of the two should be used by the RPM to provide the adequate level of mitigation and protection.

For the purposes of NOAA's decision-making, critical actions are defined as the following types of activities:

- Proposed actions to be located in a floodplain which would involve the use or storage of hazardous materials or hazardous waste (e.g., laboratories, facilities that require underground storage tanks, etc.). The human health and safety dangers posed by the use or storage of hazardous materials warrants use of the 500-year floodplain as a basis of evaluation or, if avoidance is not practicable, protection of the real property to the 500-year flood level will be achieved.
- Proposed actions to be located in a floodplain which would involve essential and irreplaceable records, utilities, and/or provide emergency services (e.g., issuing emergency weather watches/warnings, etc.).
- Proposed actions to be located in a floodplain which involve vital data storage centers (e.g., weather data, climatological data, etc.).
- Proposed actions to be located in a floodplain where it is known that severe flood damage has occurred in the past.

*If the proposed action is a critical action based on the definitions above, **proceed to Step 2** using the higher degree of flood risk (0.2 percent chance flood). If the proposed action is not a critical action, but is located in (Step 1A) or adversely affects a floodplain and/or wetland (Step 1B), **proceed to Step 1D**.*

*However, if the proposed action is not located in a floodplain and/or wetland (Step 1A), will not adversely affect the floodplain and/or wetland (Step 1B), or is not a critical action (Step 1C), the RPM will **stop here** and document the finding in the project file. Even if the proposed action is not located in or adversely affects a floodplain and/or wetland, a categorical exclusion, Environmental Assessment (EA), or Environmental Impact Statement (EIS) may be necessary for the proposed action and if so, must be completed using the internal procedures in NAO 216-6.*

Step 1D: Is the action a limited action?

Certain minor activities that are undertaken by NOAA must be located in floodplains or wetlands due to functional dependency (that is, no practicable alternative sites outside the floodplain exist). For the purposes of NOAA's decision-making, the following types of activities are considered limited actions:

- Activities that require location in or access to the floodplain and/or wetland and are easy to remove completely at the threat of flooding (e.g., a flash flood warning or flood warning has been issued). The types of activities include, but are not limited to, placement of temporary survey equipment, temporary gauges, and temporary data collection equipment. The early public notice will include the intended evacuation steps to temporarily remove the equipment outside of the floodplain in the event a warning is issued.
- Leases, licenses, or permits for the use of existing real property where NOAA has a functional dependence on the location of the site. These activities include:
 - Moorage space on an existing pier;
 - Placement of seismic, tide, river, or tsunami gauges or stations where only minor construction or modification of the site is anticipated, gauges or stations are protected, and equipment used does not contain hazardous materials;
 - Meteorological instruments associated with aviation operations on an existing site where only minor construction or modification of the site is anticipated and the equipment and associated support structures are elevated and/or protected from flood hazards;
 - Use of existing weather radar or wind profiler facilities where only minor construction or modification of the site is anticipated; and
 - Placement of antennas on an existing tower where minor improvement of support facilities or modification to the site is anticipated and the associated support structure on the ground are elevated and/or protected from flood hazards.
- Maintenance and repair on existing real or personal property, either scheduled or unscheduled, in a floodplain or wetland (e.g., replacing windows, safety and fire deficiency repair, etc.). This includes proposed actions to upgrade/replace systems; however, the RPM must consider mitigation measures as part of any system upgrade or replacement to minimize the flood risk to the facility (e.g., raising or protecting machinery and facility system infrastructure).
- Minor modification of an existing real property in a floodplain or wetland to improve safety or environmental conditions when such modification does not expose the facility to flood hazards (e.g., adding ADA compliant ramps). This does not include proposed actions that change the useful life of the structure, involve draining/dredging, add square footage, or may involve hazardous materials.
- Succeeding or extension of leases, licenses, or permits when there are minor improvements to the facility (e.g., adding ADA compliant ramps) and does not involve expansion or modification of the facility or site from the original lease, license, or permit. The RPM must consider mitigation measures to minimize the flood risk to the facility (e.g., raising or protecting machinery and facility system infrastructure).

*If the proposed action is a limited action based on the definitions above, **the RPM will proceed to Steps 3, 4, 5, and 8.** If circumstances change, or if new information becomes available, the RPM will evaluate whether the proposed action is still a limited action, or*

*whether the full compliance process applies. If the proposed action is not a limited action, it is subject to the Eight-Step process and the RPM will **proceed to Step 2**.*

If the RPM is uncertain about executing this step, the RPM should contact the NOAA Safety and Environmental Compliance Office for assistance in evaluating a proposed action and applying the requirements of this document.

Step 2: Identify and evaluate practicable alternatives.

The RPM will identify and evaluate practicable alternatives to the proposed action. This evaluation may be considered a “practicable alternatives analysis” or PAA. Alternatives identified in this step must also be used in the EA or EIS (as reasonable alternatives under NEPA), if one is being prepared for the proposed action. Practicable alternatives are actions capable of being performed within existing constraints. If the RPM determines that its proposed action is located in or will adversely affect a floodplain or wetland, the RPM must fully evaluate practicable alternatives that include:

- Using other sites located outside the floodplain and/or wetland that would not adversely affect a floodplain or wetland;
- Taking other actions that serve essentially the same purpose as the proposed action but that are not in a floodplain or wetland or would not adversely affect a floodplain or wetland; or
- Taking no-action.

How to Evaluate Practicable Alternatives

The RPM will use the constraints below to evaluate whether a proposed alternative is practicable. The constraint factors should be considered together in context. The RPM will examine all practicable alternatives even in cases where Federal involvement is somewhat limited and should include consideration of State requirements and local conditions and ordinances. The presence of one or more constraints does not mean a proposed alternative is practicable or impracticable. If a constraint factor exists, the RPM will consider whether the constraint or combination of constraints would prevent the proposed alternative from occurring. If the proposed alternative cannot occur given existing constraints, then it is not practicable.

Constraint Factors to Evaluate the Practicability of Alternatives:

- **Environmental constraints** include topography, habitat, flood-related hazards (e.g., wave action erosion, subsidence, scour, velocity waters) present in the area, and already sensitive environmental conditions;
- **Financial constraints** include costs of space, construction, services, and relocation.

- **Legal constraints** include legislative mandates, deeds, leases, and other property rights of third parties;
- **Social constraints** include historical and cultural values, land patterns, and aesthetic value of a location; and
- **Technical constraints** include limitations in the ability of equipment and other technology to carry out a function using fewer resources or in a more environmentally friendly manner.

*If the RPM revises its proposed action to avoid locating in or adversely affecting a floodplain or wetland, the action is not subject to the remaining requirements of this document, **stop here** and document the finding in the project file. Even if the proposed action is not located in or adversely affects a floodplain and/or wetland, a categorical exclusion, Environmental Assessment (EA), or Environmental Impact Statement (EIS) may be necessary for the proposed action and if so, must be completed using the internal procedures in NAO 216-6.*

*When a proposed action is needed to carry out the mission of NOAA and there are no other sites or other actions capable of being performed within existing constraints, then there are no practicable alternatives to the proposed action. If there are no practicable alternatives, the RPM will document the finding for the project file and proceed to **Step 3**.*

Step 3: Initiate public notice.

If after an evaluation of practicable alternatives, the RPM proposes to take an action located in or adversely affecting a floodplain and/or wetland, the RPM will notify the public. If the NEPA process is being used to complete the Eight-Step process, the public scoping period or comment period for the EA or EIS may be used as the public comment period for the Eight-Step process. In these situations, it is acceptable for Steps 4 and 5 to be completed prior to this step and released to the public for comment by releasing the draft EA or Draft EIS. The purpose of this notification is to enable interested parties to have input to the decision outcome for all proposed actions that are located in or will adversely affect floodplains and/or wetlands. Whenever possible, public notice will precede an expenditure of funds in order to preclude an irretrievable commitment of resources or an elimination of choices of alternatives to meet an objective.

Public Notice Requirements

The RPM may determine the appropriate types of notices, adequate comment periods, need for public meetings, and whether to issue multiple notices on factors that include, but are not limited to:

- Scale of the action;
- Potential for public controversy;
- Degree of public need;
- Number of affected agencies and individuals;
- The reason why the action needs to be located in the floodplain/wetland or adversely affects a floodplain or wetland; and

- The anticipated nature of effects on the floodplain and/or wetland; or, the anticipated nature of effects of a flood event on the proposed action (e.g., flood loss).

Based on the factors above, the RPM will determine an appropriate comment period (generally 30 calendar days). A test of appropriateness may be made by considering the amount of time sufficient to enable the public to provide meaningful input to the decision-making process. For critical actions, the RPM will conduct an adequate comment period to enable consultation and input from local government(s), State floodplain managers, and emergency managers. The RPM may choose one or more than one of the methods below to notify the public. Some types of public notices may include, as appropriate:

- Federal Register notice;
- Notice to Federally-recognized Tribes when effects may occur on a reservation;
- Publication on a website;
- Publication in local newspapers (in papers of general circulation rather than legal papers);
- Notice to other Federal agencies (e.g., FEMA, DOT, etc.)
- Notice to State and local officials (e.g., NFIP State Coordinating Agencies, State DOT, emergency managers);
- Notice through other local media;
- Notice to potentially interested community organizations;
- Publication in newsletters that may be expected to reach potentially interested persons;
- Direct mailing to owners and occupants of nearby or affected property;
- Posting of notice on and off site in the area where the action is to be located (if on government property); and/or
- Holding a public hearing.

The public notice will include:

- A description of the action, its purpose, and a statement of the reason for carrying out an action located in or adversely affecting a floodplain and/or wetland;
- A description of the practicable alternatives identified in Step 2;
- A description of the type, extent, and degree of impacts involved and the floodplain or wetland values present; and
- Identification of the RPM from whom further information can be obtained.

*Once the early public notice and comment period is complete, the RPM will assess, consider, and document responses to the comments received individually and collectively for the project file, then proceed to **Step 4**.*

Executive Order 12372 Consultations

For proposed actions that involve State and local governments that would provide non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development, the RPM will consult early with State and local governments in compliance with Executive Order 12372, Intergovernmental Review of Federal Programs (former requirement is OMB Circular A-95). RPMs will use the contact lists and clearinghouses

as directed by the Office of Management and Budget (OMB) (e.g., the State Point of Contact List). This consultation may occur concurrently with the early public notice.

Step 4: Analyze the impacts of the proposed action

For proposed actions located in or adversely affecting a floodplain and/or wetland, the RPM will identify, analyze, and document the potential direct and indirect adverse impacts associated with the occupancy and/or modification of the floodplain and/or wetland. The impacts analysis should be documented in the PAA within or attached to a CE, EA or EIS, if one is being prepared for the proposed action. The PAA will consider whether the proposed action will result in an increase in the useful life of any structure or facility, maintain the investment at risk and exposure of lives to the flood hazard, or forego an opportunity to restore the natural and beneficial values served by floodplains and wetlands.

In the PAA, the RPM will consider and evaluate:

- Direct effects, which are caused by the proposed action and occur at the same time and place (e.g., adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values);
- Indirect affects, which are caused by the proposed action and are later in time or farther removed in distance but are still reasonably foreseeable;
- Secondary impacts which may occur when certain types of actions may support subsequent actions which have impacts of their own (e.g., development, traffic, etc.); and
- Cumulative effects, which result from the incremental effect of the proposed action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or individual undertakes such other actions.

For the protection of wetlands, E.O. 11990 requires the RPM to evaluate additional impacts that affect:

- *Public health, safety, and welfare.* This category includes water supply; water quality; recharge and discharge; pollution; flood and storm hazards; sediment; and erosion;
- *Maintenance of natural systems.* This category includes conservation and long term productivity of existing flora and fauna; species and habitat diversity and stability; hydrologic utility; fish; wildlife; timber; and food and fiber resources; and
- *Other uses of wetlands in the public interest.* This category includes recreational, scientific, and cultural uses.

Once the RPM has identified and analyzed the potential impacts of the proposed action, proceed to **Step 5**.

Step 5: Identify mitigation measures

The RPM will identify and plan for measures to mitigate impacts to floodplains and wetlands in the PAA, particularly for critical actions. The mitigation measures should be documented within

the PAA within or attached to a CE, EA or EIS, if one is being prepared for the proposed action. Mitigation measures may be directly related to the proposed action or add to the value of the floodplain or wetland in general. Examples of mitigation measures directly related to the proposed action include, but are not limited to, elevation, dry floodproofing (non-residential structures only), construction of flood protection structures, treatment of runoff prior to discharge, and/or creation of a buffer zone. Examples of mitigation measures to enhance the natural functions of a floodplain or wetland include wetland habitat restoration and natural resource management.

RPMs will conduct the following mitigation measures for *floodplains*:

- Minimize the risk to human life and property due to flood and storm damage;
- Minimize the adverse impacts on the floodplain values and functions;
- Construct new, substantially improved, or repair substantially damaged Federal structures (e.g., buildings), antennas, placement of equipment, and construct other facilities in accordance with Federal standards (e.g., the criteria of the National Flood Insurance Program), State and local requirements. For some types of structures or facilities, there may be deviations from these standards allowable under the National Flood Insurance Program;
- Wherever practicable, elevate structures above the base flood level using methods such as piles, columns, piers, posts, and foundation walls rather than fill in land;
- For critical actions, if locating outside the 0.2 percent annual chance flood hazard area is not *practicable*; protect structures/equipment so it can withstand the 0.2 percent annual chance flood (500-year) or otherwise minimize possible damages from such a flood. If the 0.2 percent annual chance flood data is not available, an estimate of the 0.2 percent annual chance flood should be developed in coordination with FEMA.
- Inform any private parties participating in a transaction of any areas located in a floodplain and the hazards of locating structures or other facilities in the floodplain; and/or
- If property has suffered flood damage or is in an identified flood hazard area, delineate past and probable flood height (on structures and other places) in order to enhance public awareness and knowledge of flood hazards.

If the proposed action will occur in a *wetland*, RPMs will include all practicable measures to minimize harm to wetlands. In addition, RPMs will conduct the following mitigation measures:

- Minimize the adverse impacts on the wetland values and functions, and
- Restore and preserve the natural and beneficial values served by wetlands.

*Once the RPM has identified the appropriate mitigation measures, proceed to **Step 6**.*

Step 6: Re-evaluate alternatives

The RPM will re-evaluate the practicable alternatives based on any additional information obtained during the Eight-Step process. In some cases, information becomes available through the Eight-Step process that changes the scope of alternatives to a proposed action. This information may include new or unforeseen impacts to the environment at the location of the

proposed action, improvements in technology for conducting the proposed activity, or other changes. The RPM will reevaluate the practicable alternatives when such information becomes apparent.

The RPM will review the public input received during the comment period and consider whether a re-evaluation of alternatives or the analysis is warranted. In other words, the RPM will determine if additional information received is new, or if the information was available to the RPM at the time of early public notice. If the information is new, the RPM will supplement the analysis and initiate public notice (Step 3) again.

If E.O. compliance was achieved outside of the NEPA process or for an action that qualifies for a CE, the RPM must send the PAA to the Safety and Environmental Compliance Office for review (typically 10 business days) to ensure adequacy of the PAA. If SECO has prepared or has been involved in preparing the PAA, this review may be deemed unnecessary.

*If the practicable alternatives analysis was satisfied through preparing an EA or EIS, the documents must be sent to the NOAA NEPA Coordinator for review and concurrence per NAO 216-6. The NOAA NEPA Coordinator will coordinate concurrently with SECO during their review on EAs and EISs that involve floodplains and/or wetlands to ensure adequacy of the PAA. Once NOAA NEPA Coordinator review and concurrence is completed, the RPM will **proceed to Step 7**.*

Step 7: Make final determination and present the decision

If the RPM decides to take an action located in or adversely affecting a floodplain and/or wetland, the RPM will prepare a public notice that presents NOAA's decision and explains the relevant factors considered by the RPM in making this determination. The purpose of the final notice is to inform the public of NOAA's final determination to conduct an action located in or adversely affecting a floodplain and/or wetland. The final public notice may be satisfied through publishing a Notice of Availability of a Final EA or Final EIS, if one is being prepared for the proposed action. For contract actions, such as lease procurements, the public notice may be concurrent with the awarding of the contract (i.e., the implementation of the action – see Step 8). If the action is a limited action or if no public comments have been received then no additional public notice is required.

The final public notice will include:

- A statement explaining the reason(s) why the action is proposed in a floodplain or wetland;
- A description of all significant factors considered in making this determination;
- A list of the alternative(s) considered;
- Whether the action conforms to the applicable Federal, State, and local floodplain protection standards and NFIP criteria;
- A description of how the action will be designed or modified to minimize harm to or within the floodplain;
- A statement indicating how the action affects or is affected by the floodplain and/or wetland and how mitigation will be achieved; and

- Identification of the RPM and how further information can be obtained.

*The RPM will determine the publication of the final public notice in the same manner as the public notice in Step 3 and following publication proceed to **Step 8**.*

Step 8: Implement the action

The RPM will implement the proposed action upon completion of the steps outlined above. All public notice requirements must be satisfied according to this process.

The RPM will implement, or ensure the applicant or lessor implements, all necessary permits and mitigation measures. These mitigation measures are conditions to implementation. The RPM will document the Eight-Step process and include and maintain all relevant documentation in the project file.

Class Reviews of Repetitive Actions

The RPM may conduct class reviews of repetitive actions if the results of individual reviews conducted pursuant to this E.O. 11988/11990 compliance process that have gone through public notice and comment result uniformly in: 1) no adverse impact on floodplains and/or wetlands; 2) little to no risk to property or lives in the event of a flood event; and, 3) little or no public comments to the contrary were received. The RPM may conduct a class review integrated with programmatic EA or EIS under NEPA.

The RPM may conduct a class review in order to improve efficiency but maintain a desirable level of compliance with E.O. 11988 when:

- The consideration of whether to locate in a floodplain and/or wetland is substantially similar to other actions;
- There is normally no practicable alternative, consistent with this E.O. 11988/11990 compliance process and the E.O. 11988, to siting in a floodplain and/or wetland;
- All practicable measures to minimize harm to the floodplain have been included in the review criteria, which if followed, will minimize any adverse impacts that may be associated with the individual actions covered in the class review.

There are conditions under which the RPM cannot undertake a class review because the proposed action(s) will result in an increased cumulative risk. The following conditions dictate when a class review cannot be undertaken:

- The proposed action(s) are construction activities within the floodway or within 50 feet of a riverbank if the floodway has not been designated including fill, new construction, substantial improvements, or other development (e.g., encroachment).
- The proposed action(s) are construction activities within a coastal high hazard area including fill, new construction, substantial improvements, or other development (e.g.,

encroachment).

- The proposed action(s) involves a structure whose lowest floor is below the 100-year flood elevation.
- The proposed action(s) involves a structure whose lowest floor has experienced flooding.

The following are examples of review criteria that, at a minimum, the RPM should consider during Step 4 when conducting a class review to ensure that floodplains and/or wetlands are not significantly adversely affected:

- All facilities should be designed and constructed to withstand flooding with minimum damage. For example, a facility might experience minor water inundation; however, there is no potential for structural damage to occur from such inundation.
- All activities will adhere to the minimum standards of the NFIP at 44 CFR 60.3 and any future amendments, and will comply with local floodplain management ordinances or regulations. Proposed actions will be evaluated to ensure that any development will not increase base floodplain elevations.
- Existing vegetation (ground cover and canopy) will be left in place and undisturbed to the maximum extent practicable.
- Flood damages to historic structures will be minimized in accordance with NFIP guidance and as appropriate, cultural resources will be preserved in accordance with consultation recommendations from the State and/or Tribal Historic Preservation Officer (if the action occurs on or affects a reservation).
- Best management practices will be used as a minimum to control surface water runoff and erosion and that disturbed areas will be reseeded as soon as possible with species adapted to existing conditions.
- Dredge spoil will be disposed of properly in accordance with local, State, and Federal regulations at an inland site outside identified floodways.
- Riprap, as opposed to soil, will be utilized as fill material below the maximum normal pool elevation.
- Prior to crossing areas harboring threatened or endangered species, areas specifically identified as “sensitive”, biologists with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service will be consulted to assist in a determination of mitigation measures necessary to mitigate or minimize potential impacts to these areas.

In areas where overhead structures were constructed, stream-banks will not be disturbed and equipment will not be driven in streams; selective cutting will be used to remove intruding

vegetation; stumps will be left at a height which will encourage resprouting, retain soil, and reduce overland water-flow; and no areas will be stripped of vegetation.